Supreme Court, U.S.
FILED
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2007

MARCEL SFARCIOC

Petitioner,

v.

ALBERTO R. GONZALES, Attorney General

Respondent.

SUPPLEMENTAL APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Exhibit #6

BY: LegalQuest Network, P.C.
Roger R. Rathi
Daniel P. Marcus
4000 Town Center, Suite 1060
Southfield, Michigan 48075
Attorneys for Petitioner

Exhibit 6

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A27 772 726 – Detroit Date: July 26, 2006

In re: MARCEL SFARCIOC

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Roger Rathi, Esq.

ON BEHALF OF DHS: Rosario Shoudy
Assistant Chief Counsel

ORDER:

PER CURIAM. We adopt and affirm the decision of the Immigration Judge. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption of affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision"). On appeal the respondent contends that the Immigration Judge erred in denying his application for cancellation of removal under section 240A(a) of the Immigration and Nationality Act in the exercise of discretion. Specifically, he maintains that the sole negative factor in his case is his "minor criminal record" (Respondent's Br. at 5). However, we find no error in this regard. Contrary to the respondent's suggestion otherwise, the Immigration Judge thoroughly reviewed the respondent's positive equities,

including his residence of long duration in the United States (which started at an early age), extensive family ties in this country (including a United States citizen wife and five-year-old son), evidence of hardship to the respondent and his family if removal occurs, a history of employment, evidence of value and service to the community, proof of genuine rehabilitation, and other evidence attesting to the respondent's good character. *See Matter of C-V-T*, 22 I&N Dec. 7 (BIA 1998); *see also Matter of Arreguin*, 21 I&N Dec.38 (BIA 1995).

Nonetheless, as the Immigration Judge noted, the respondent's employment history is questionable as the sole evidence thereof, apart from the respondent's own claims, are unsworn letters from on of his brother (I.J. at 19-20; Applic. tabs 8, 15). While the brother claims the respondent also worked for another trucking company on occasion, the respondent made no such claim, nor was any evidence in this regard produced. The respondent has not provided any tax returns, or evidence that he has ever filed the same, which might serve to corroborate his claim regarding employment (I.J. at 19).

As the Immigration Judge noted, the respondent's criminal history in the United States began in 1992 when he was a juvenile, with his first arrest as an adult occurring in September of 1995, for receiving and concealing stolen property in an amount over $100 (Tr. At 40-41; Exh. 5; I.J. at 21). The respondent was also convicted of the same offense in October 1997, as well as of attempted unlawful driving away of a motor vehicle in May of that same year. The respondent admitted to receiving two or three fines for driving while his license was suspended in 1994 or 1995 and 1997 or 1998 (Tr. at 47). In addition, he reported that he received tickets for driving under the influence of drugs and alcohol in 1997 and 1998, respectively (Tr. at 49). In April of 2004 the respondent was arrested for failing to appear (Tr. at 50-51). In May of 2005 he was convicted of a miscellaneous public order crime

relating to his operation of a motor vehicle, then one day later he was arrested for, and ultimately convicted of, possession of a motor vehicle with intent to pass false title (Tr. at 51-52). The next month, June of 2005, the respondent was convicted of violating his probation for the latter offense, and was sentenced to imprisonment (tr. at 52-53). He has since been detained.

The Immigration Judge appropriately noted the respondent's varying and rather self-serving explanations for his convictions, including his suggestion that one of his convictions for receiving and concealing stolen property related to an item in a vehicle, when in fact it was the vehicle itself that was stolen (I.J. at 21; Exh. 3; Tr. at 30, 44). The respondent also testified that he no longer has a drinking problem, that the same was in the past when he was growing up (Tr. at 62). However, this claim is at best questionable in light of the fact that the respondent's last probation violation was occasioned by his arrest for drinking and driving (tr. at 53).

The respondent's long residence in this country from a young age and his extensive family ties here undoubtedly constitute strong equities. These equities, however, must be weighed against the negative factors in the respondent's case, specifically his criminal convictions, various arrests, and evidence for repeated disregard for the law. *See, e.g., Matter of Sotelo*, 23 I&N Dec. 201 (BIA 2001); *Matter of C-V-T, supra.* Although the respondent argues on appeal that he cannot demonstrate evidence of rehabilitation since the time of his incarceration, that is not the sole issue presented. Rather, in his testimony the respondent sought to minimize his involvement regarding the various offences of which he stands convicted, often suggesting that he was a victim of circumstances, and/or that he plead guilty only in order to secure a lesser punishment (Tr. at 35, 42, 44, 50, 55, 57). The respondent's disregard for the laws of this country, and the